Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

No. 75-656

J. NORTON HAAS, JR.,
Appellant,

vs.

DOLORES C. HAAS,
Appellee.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT OF MOTION TO DISMISS

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TABLE OF CONTENTS

MOTION TO DISMISS OR AFFIRM 1

BRIEF IN SUPPORT OF MOTION TO DISMISS—

Facts 3

Argument—

The Mississippi Alimony Statute Conforms With the Constitutional Mandate That It Perpetrate a Rational State Interest Because It Complies With the Dictates of This Court in *Kahn* 3

Conclusion 6

CERTIFICATE 7

Table of Authorities

Cases

Dandridge v. *Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1969) 5

Felder v. *Felder*, 195 Miss. 326, 13 So.2d 823 (1943) 4

Kahn v. *Shevin*, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974) 4, 6

Lindsey v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972) 5

Murphy v. *Murphy*, 232 Ga. 354, 206 S.E.2d 460 (1974) 4

Robinson v. *Robinson*, 112 Miss. 224, 72 So. 923 (1916) 4

San Antonio Indep. Sch. Dist. v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) 5

Shapiro v. *Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) 5

CONSTITUTIONAL PROVISIONS AND STATUTES

Fifth and Fourteenth Amendments, Constitution of the United States 1, 4
Section 93-5-23, Mississippi Code of 1972 .....1, 2, 3
Supreme Court Rule 16 1

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Appellee.

MOTION TO DISMISS OR AFFIRM

Appellee moves this Court under Supreme Court Rule 16 to dismiss the appeal, in that it does not present a substantial federal question as to the claims that (1) the alimony statute of the State of Mississippi, Section 93-5-23, Mississippi Code of 1972, is unconstitutional on its face as being violative of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States; or (2) that the application of the alimony statute of the State of Mississippi creates an unjust classification based upon sex as to provide a basis for invidious discrimination in the allocation of alimony.

Alternatively, appellee moves the Court to affirm the decision of the Supreme Court of Mississippi on the ground that it is manifest that the questions on which the decision depended are so insubstantial as not to need further argument because (1) the classifi-

cation created by the language of the statute in question bears a rational relationship to the intent of the legislative enactment in question; and (2) because a previous pronouncement by this Court clearly indicates that social and economic classifications such as alimony which are based upon sex are not unconstitutional, but rather are in furtherance to rational state policies and interest.

It is, therefore, respectfully moved that this appeal be dismissed and in the alternative that the judgment of the Supreme Court of the State of Mississippi sustaining Section 93-5-23, Mississippi Code of 1972, be affirmed.

Respectfully moved, this the 17th day of February, 1976.

A. F. Summer
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State of Mississippi

Ed Davis Noble, Jr.
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BRIEF IN SUPPORT OF MOTION TO DISMISS

FACTS

In general, the appellee believes the facts as represented at pages 3 through 5 of the appellant's brief adequately state the posture of this case. However, appellee disagrees that the facts in this cause indicate any grounds whatever that would show an unconstitutional application of the Mississippi alimony statute.

ARGUMENT

The Mississippi Alimony Statute Conforms With the Constitutional Mandate That It Perpetrate a Rational State Interest Because It Complies With the Dictates of This Court in Kahn.

The statute under attack in this cause, Section 93-5-23, Mississippi Code of 1972, states as follows:

> §93-5-23. Custody of children—alimony.
>
> When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife, or any allowance to be made to her, and may, if need be, require sureties for the payment of the sum so allowed. The court may afterwards, on petition, change the decree, and make from time to time such new decrees as the case may require. However, where proof shows that both parents have separate incomes or estates, the court may require that

each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each.

The Supreme Court of Mississippi has held that alimony is an allowance authorized by law to be made to the wife out of her husband's estate for her support. *Felder* v. *Felder*, 195 Miss. 326, 13 So.2d 823 (1943). The allowance of alimony is justified by the natural obligation of the husband to support his wife. *Robinson* v. *Robinson*, 112 Miss. 224, 72 So. 923 (1916).

The alimony statute of the State of Mississippi has never been challenged until now; therefore, this case is one of first impression, but this Court is not without guidance in this area. The Supreme Court of the State of Georgia has recently ruled that statutes which provide for award of alimony to the wife but not to the husband were not unconstitutional. *Murphy* v. *Murphy*, 232 Ga. 354, 206 S.E.2d 460 (1974).

The appellee believes that the Supreme Court of Georgia in *Murphy*, supra, was correct in determining that this Court's decision in *Kahn* v. *Shevin*, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974) is dispositive of the constitutional questions presented in the appeal. There, the court approved the constitutionality of a Florida statute which granted widows an annual $500 property exemption while not providing the same benefit for widowers. The appellant sought a declaratory judgment in the county circuit court which held the statute violative of the Equal Protection Clause of the Fourteenth Amendment. The Florida Supreme court reversed, finding the classification "widow" valid because it has a "fair and substantial relation to the object of the legislation" of reducing "the disparity between the economic capabilities of a man and a woman." 40 L.Ed.2d 189, 192.

In affirming the conclusion reached by the Supreme Court of Florida, this Court followed the dictates of prior decisions. In *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973), this Court quoted with approval Mr. Justice Stewart's concurrence in *Shapiro* v. *Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), when it stated:

> " 'The Court today does *not* "pick out particular human activities, characterize them as 'fundamental,' and give them added protection. . . ." To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands.' 394 U.S. at 642, 22 L.Ed.2d 600 (Emphasis from original.)" *Rodriguez*, 411 U.S. 1, 31.

Or, presented in another fashion,

> "[T]he Constitution does not provide judicial remedies for every social and economic ill." *Lindsey* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972).

But an even more pertinent observation by this Court would be its pronouncement in *Dandridge* v. *Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1969), where it stated:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some

'reasonable basis,' it does not offend the Constitution simply because the classification is not made with mathematical niceties or because in practice it results in some inequality. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 55 L.Ed. 369, 377, 31 S.Ct. 337. The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific. Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 57 L.Ed. 730, 734. 33 S.Ct. 441. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. McGowan v. Maryland, 366 U.S. 420, 426, 6 L.Ed.2d 393, 399, 81 S.Ct. 1101." 397 U.S. 471, 485.

There can be little doubt that the area of alimony payments is one of economics and social welfare. To accept the argument presented by the appellant would necessitate a reversal of *Kahn* v. *Shevin,* supra. There, this Court distinguished most, if not all of the authority relied upon by appellant herein. Apparently, their argument is of little moment or weight.

CONCLUSION

The Mississippi alimony statute is not arbitrary even though it may discriminate in favor of a certain class, for its discrimination, if any, is founded upon a reasonable distinction or difference in state policy. For this reason, it is not in conflict with the federal Constitution.

The appellee submits that the appeal from the judgment of the Supreme Court of the State of Mississippi should be dismissed or in the alternative that

the judgment upon which it is based should be affirmed without further briefing or argument.

Respectfully submitted,

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State of Mississippi

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CERTIFICATE

I, Ed Davis Noble, Jr., Assistant Attorney General, do hereby certify that I have mailed by United States Mail a true copy of the foregoing Motion to Dismiss or Affirm and Brief in Support of Motion to Dismiss to the following:

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